

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF  
AND  
APPENDIX**



75-7642  
~~75-8076~~

In The

United States Court of Appeals

For The Second Circuit

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VICTOR O. PRINCIOTTI,

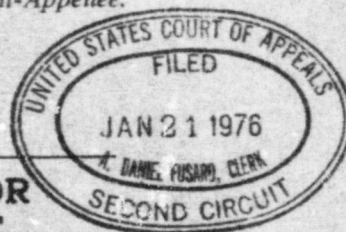
*Plaintiff-Appellant,*

- against -

MEDITERRANEAN MARINE LINES, INC.,

*Defendant-Appellee.*

P/S



**BRIEF AND APPENDIX FOR  
DEFENDANT-APPELLEE**

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In The  
UNITED STATES COURT OF APPEALS  
For the Second Circuit

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Docket No. 75-8076

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VICTOR O. PRINCIOITI,  
Plaintiff-Appellant,  
-against-  
MEDITERRANEAN MARINE LINES, INC.,  
Defendant-Appellee.

BRIEF AND APPENDIX OF DEFENDANT-  
APPELLEE, MEDITERRANEAN MARINE  
LINES, INC.

STATEMENT OF THE ISSUE PRESENTED  
FOR REVIEW

---

Should the Jury's resolution of the basic credibility question concerning the vessel's seaworthiness be disturbed?

STATEMENT OF THE CASE

This is an Appeal by plaintiff-seaman from a Judgment entered in the District Court based upon a Jury's special verdict that defendant's vessel, the s/s DEFIANCE, was seaworthy, following a three day trial before District Judge Edward Weinfeld.

Plaintiff commenced this action to recover damages

for injuries allegedly sustained when he fell on a stairway in the after housing of defendant's vessel, s/s DEFIANCE, which was berthed at Port Newark, New Jersey on a rainy day in May, 1972. Although the Complaint alleged the usual dual causes of action, i.e., Jones Act negligence and breach of the seaworthiness warranty, the Jones Act cause of action was formally withdrawn by plaintiff's attorney after plaintiff rested. (27a)\*. There is, therefore, no appealable issue on the negligence question.

It was plaintiff's claim that he fell because he slipped in water leaking from an ice-making machine (10a) located across the thwartship passageway from the head of the stairway in question.

To support plaintiff's testimony that the ice-making machine was leaking, one witness - longshoreman William Muse - testified at the trial. The deposition testimony of another witness, electrician Eli Weir, was excluded by the Trial Court because of remoteness. That deposition was not permitted to be read because Weir's observations of the condition of the ice machine had been made when he last served aboard the DEFIANCE in June 1971, almost one year before the accident in suit. (8a)

Plaintiff testified that he had first joined the vessel as a messman the day before his accident, May 13, 1972. (12a, 13a) Although he had drawn ice cubes from the machine for both lunch (14a) and supper (15a) the first day, and for breakfast on the morning of his accident (15a), he conceded that he had

---

\*All references are to page numbers in the trial transcript.

not seen water on deck in the vicinity of the ice machine on any of these three occasions.

It began to drizzle early on the morning of May 14, 1975 (2a, 35a, 30a), and turned to heavy rain by noon time (21a). Although the weather deck entrance to the passageway where the ice machine was located is covered (4a, 11a, 26a), the passageway was subject to heavy foot traffic all day by longshoremen, shoreside personnel and crewmembers. (18a, 20a) In fact, Chief Steward Jose Dujon compared it to "Times Square" (37a). The entire length of this thwartship passageway was lined with a grooved rubber mat (3a, 9a, 30a, 37a) put down before the vessel arrived in port (38a). Its purpose was to protect the tile from heavy traffic and to increase traction in wet weather. Handrails also ran the entire length of the illuminated passageway (23a). Photographs depicting these conditions were received in evidence.

It was not until plaintiff began preparing the tables for lunch late that morning that he stated he first saw water on the passageway deck near the machine (16a-17a). Plaintiff went ashore after lunch at approximately 1:15 p.m. to make phone calls from a public phone on the dock (20a). He was wearing street clothes at the time (19a). Plaintiff admitted that it was raining hard (21a), as he crossed the 250 feet (2a, 19a) of open pier space. After making the phone calls, plaintiff returned in the downpour, climbed the exposed gangway (22a), and walked several feet on deck before stepping through the port door of the thwartship passageway.

Plaintiff then walked along the rubber mat, past the ice-making machine, without recalling whether he was using the handrails in the passageway (23a). Diagonally across the passageway from the ice machine was a stairway leading down to his quarters on the deck below. Plaintiff turned to his right to go down the stairway, when he slipped and fell down the ladder. Plaintiff admitted that the steps on the stairs were equipped with safety treads to prevent skidding (24a).

Plaintiff was assisted back up the ladder by his witness, longshoreman Muse, and was placed in a chair in the passageway. When Purser Chester Robbins arrived a few minutes later, he found plaintiff standing against the wall (28a). Robbins assisted plaintiff into the crew messroom, where the Purser conducted an examination (28a), and then referred plaintiff to a local hospital.

Plaintiff maintains that water in the passageway near the stairway leaked from the ice machine, and ran along the passageway. He described the water in the passageway as follows:

"This water was coming from the ice-making machine. It [the stairway] was directly straight across from the ice-making machine and water running down along the side. In other words, there is an angle from the machine to the stairway, and it was coming down this side and running along that way. Just a little bit even past the stairway. Just right around by the stairway." (10a)

Plaintiff admitted on cross-examination that he had not mentioned a "leaking machine" when questioned about the

accident by the Purser (25a). In fact, Purser Robbins testified that plaintiff told him after his accident that he had slipped "because his shoes were wet" (30a).

To corroborate plaintiff's testimony, longshoreman Muse testified on direct that he recalled the ice machine was leaking (1a), and that he saw plaintiff fall. However, on cross-examination, Muse conceded that the signed statement he had given plaintiff's attorney that the machine was "always leaking" was inaccurate since that was his first and only day aboard the *DEFIANCE* (5a). Faced with that inconsistency, he admitted:

"Q. Did you see where the water was coming from?

A. I didn't see where it was coming from.

Q. You don't know whether it was leaking or not?

A. No, I don't." (pp. 6a-7a)

This constituted plaintiff's proof of a leaking ice machine.

To counter this proof, defendant offered substantial evidence from Purser Chester Robbins, Chief Steward Jose Dujon and William Friesen, who was the service manager of the maintenance contractor for the ice machine in question.

Chief Steward Dujon, who recalled the passageway traced with "footmarks" (36a), testified he had never seen water leak out of the ice-making machine (37a), except in extremely heavy rolling while the vessel was in a storm at sea.

Furthermore, he pointed out that the ice machine was equipped with an overflow to collect excess water (37a).

Purser Robbins inspected the passageway after the accident and stated the stairs were dry (29a). He confirmed that the ice-making machine had not been leaking (31a).

Service Manager Friesen, testified that the machine in question was fitted with a sanitary drain line (32a) to prevent spillage of water. From his records, he was able to state that one of his mechanics inspected the machine shortly before and after the accident and although they replaced some electrical parts, they found no evidence of any leak in the stainless steel bin which collected the melted ice water in the machine before drainage (33a). Mr. Friesen testified that, in fact, he had never seen a steel bin on that type of ice machine leak (34a).

There was, therefore, substantial if not overwhelming evidence that the ice machine was not leaking at the time of the accident.

POINT I

THE JURY, WEIGHING ALL MATERIAL EVIDENCE, RESOLVED THE SEAWORTHINESS QUESTION CONCERNING THE ICE-MAKING MACHINE IN DEFENDANT'S FAVOR.

The jury considered the primary credibility question regarding the alleged leakage from the ice-making machine and resolved that issue in favor of the defendant.

Plaintiff had the burden of showing by a fair preponderance of the credible evidence that his injuries were proximately caused by the unseaworthiness of the vessel. In order to have met that burden, plaintiff had to show that (a) the ice-making machine was indeed leaking, (b) that the passage-way at the head of the stairs was not reasonably safe as a result, and (c) that this condition was a proximate cause of plaintiff's accident. Blier v. United States Lines Co., 286 F. 2d 920 (2d Cir., 1961), cert. den. 368 U.S. 886 (1961).

Plaintiff's only witness to his theory of a leaking ice machine conceded on cross-examination that he did not see any water leaking from the machine. Longshoreman Muse, the Purser, the Chief Steward and the maintenance contractor, Mr. Friesen, each testified that the ice machine never leaked. Only the plaintiff claims to have seen water leaking from the ice maker.

After having weighed all the evidence, the jury found the vessel seaworthy. Conceicao v. New Jersey Export Marine Carpenters v. International Terminal Operating Co., Inc., 508 F. 2d 437, 440 (2d Cir., 1974), cert. den. 421 U.S. 949 (1975).

It is, of course, axiomatic that it is for the jury, not the Appellate Court, to determine the facts of the case. The verdict, when based on substantial evidence, will be conclusive and may not be reviewed in the Appellate Court. Atlantic & Gulf Stevedore, Inc. v. Ellerman Lines, Ltd., 369 U.S. 355 (1962), reh. den., 369 U.S. 882 (1961), mot. den., 371 U.S. 803 (1962). The function of the Court on appeal, with respect to findings of fact by the jury, is to determine whether there was credible evidence tending to support the verdict, not to substitute its judgment of the facts for that of the jury. New York, O & W. Ry. Co. v. Jones, 66 F. 2d 556, 557 (3rd Cir., 1933), cert. den., 290 U.S. 687 (1933).

The evidence produced at the trial must now be viewed in a light most favorable to the prevailing party. Appellee is entitled to the benefit of all favorable inferences which may reasonably be drawn from the facts proved, and the verdict that the vessel s/s DEFIANCE was not unseaworthy on May 14, 1975, must be sustained so long as there was substantial evidence before the jury in support of that finding. Een v. Consolidated Freightways, 220 F. 2d 82, 85 (9th Cir., 1955); Schultz & Lindsay Const. Co. v. Erikson, 352 F. 2d 425 (8th Cir., 1965); Sterling Drug, Inc. v. Cornish, 370 F. 2d 82 (8th Cir., 1967); Lewis-Kures v. Edward R. Walsh & Co., 102 F. 2d 42, (2nd Cir., 1939), cert. den., 308 U.S. 596 (1939).

As was stated in Tennant v. Peoria & P.U. Ry. Co.,

321 U.S. 29, 35, (1943) by the Supreme Court:

"It is not the function of a court to search the record for conflicting circumstantial evidence in order to take the case away from the jury on a theory that the proof gives equal support to inconsistent and uncertain inferences. The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury. It is the jury, not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions, and draws the ultimate conclusion as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable. Washington & Georgetown R. Co. v. McDade, 135 U.S. 554, 571, 572; Tiller v. Atlantic Coast Line R. Co., *supra*, 68; Bailey v. Central Vermont Ry., 319 U.S. 350, 353, 354. That conclusion, whether it relates to negligence, causation or any other factual matter, cannot be ignored. Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable."

This Circuit has followed this rule, most recently in King v. Deutsche Dampfs-Ges, 523 F. 2d 1043, 1045 (2nd Cir., 1975) where Judge Timbers wrote:

"On appeal we are no more free than the district court to ignore evidence favorable to plaintiff or 'to set aside the jury verdict merely because the jury could have drawn different inferences . . . ' \* \* \* Our review is limited to determining whether there was substantial evidence to support the verdict . . ."

There was certainly substantial evidence before the jury that (1) the ice-making machine did not leak, and (2) that the vessel took extensive measures to prevent accidents

in the passageway, even under adverse weather conditions. The jury's carefully determined verdict should not now be set aside.

POINT II

THE COURT DID NOT ABUSE ITS DISCRETION IN EXCLUDING A DEPOSITION DESCRIPTION BY ELECTRICIAN WEIR OF THE CONDITION OF THE ICE MACHINE IN JUNE 1971, SOME 11 MONTHS BEFORE THE ACCIDENT.

Defendant objected to the probative value of the Weir deposition as irrelevant and too remote. Weir had testified that he served as an electrician aboard the DEFIANCE for three months ending in June, 1971 and three months again in 1973. He was not aboard the vessel for a period of almost one year before the accident, and did not return until one year after the accident. The Court ruled that the testimony of Weir was too remote (44) to be of material value to the jury.

Materiality refers to the probative weight that the evidence has which is reasonably likely to influence the tribunal and have a bearing on its decision. Weinstock v. U.S., 231 F. 2d 699 (D.D.C., 1956); U.S. v. DeLucia, 256 F. 2d 487, (7th Cir., 1958); cert. den., 358 U.S. 836 (1958).

The rationale for allowing the trial judge to exclude evidence which he considers too remote is apparent when the evidence is being offered to substantiate an alleged condition that is claimed to have been the proximate cause of an accident. Professor Wigmore expanded on the problems involved in proving the existence of a condition:

"The degree of probability of this continuance depends on the chances of intervening circumstances having occurred

to bring the existence to an end. The possibility of such circumstances will depend almost entirely on the nature of the specific thing whose existence is in issue and the particular circumstances affecting it in the case in hand. That a soap-bubble was in existence half-an-hour ago affords no inference at all that it is in existence now; that Mt. Everest was in existence ten years ago is strong evidence that it exists yet; whether the fact of a tree's existence a year ago will indicate its continued existence to-day will vary according to the nature of the tree and the conditions of life in the region. So far, then, as the interval of time is concerned, no fixed rule can be laid down; the nature of the thing and the circumstances of the particular case must control." Wigmore on Evidence, 3rd Ed., §437 at p. 413.

It is for this reason that the issue of whether evidence is too remote is left to the trial judge. International Shoe Machine v. United Shoe Machinery Corp., 315 F. 2d 449 (1st Cir., 1963) cert. den., 375 U.S. 820 (1962); Smith v. Spina, 477 F. 2d 1140 (3rd Cir., 1973)

The District Court holding in United States v. Maryland & Virginia Milk Pro. Ass'n., 20 F.R.D. 441, 442 (D.D.C., 1975) is appropriate:

"The question whether evidence is too remote is in all cases to be determined by the court. The decision depends in large part on the issues. It is the function and the duty of the court of its own motion to exclude evidence that it deems too remote, even though possibly it may have some nebulous logical distant relevancy to the issues. In this respect there is no distinction between an antitrust case and any other case. Consequently, it is entirely proper and even desirable for the court to fix a so-called 'cut-off' date, or a series of 'cut-off dates'."

The "remoteness" rule has often been applied in this Circuit, See Vareltzis v. Luchenbach Steamship Co., 258 F. 2d 78, 81 (2nd Cir., 1958); Fitzgerald v. United States Lines, Co., 306 F. 2d 461, (2nd Cir., 1962); reversed on other grounds, 374 U.S. 16 (1962).

In Fitzgerald, supra, the Court held it was not prejudicial error for the court to exclude testimony of similar act by a witness which occurred one month before plaintiff's accident, recognizing the trial judge's discretion to exclude evidence it felt too remote. In Cardali v. A/S Glittre, et. al., 360 F. 2d 271, 275 (2nd Cir., 1966), this Circuit excluded testimony by a witness concerning the condition of the bulwark steps upon which plaintiff fell. The Court found that the witness did not see the steps until an hour or more after the accident, and this was considered too remote.

The decision of the trial court to exclude Weir's testimony did not constitute an abuse of its discretionary power, especially when viewed against the background of all the evidence.

CONCLUSION

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE  
AFFIRMED.

Respectfully submitted,

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1 dpd

Muse--Direct

1a  
6

2 A What type of deck?

3 Q Yes, sir. What was it made of, the flooring?

4 A The floor, well it might have been linoleum under  
5 the mat. But from the mat to the wall was but a foot left,  
6 where the mat didn't cover.

7 Q Was that some form of linoleum or Kentile?

8 A Kentile, I think.

9 Q Kentile. Now, did the water cover the mat?

10 A Yes.

11 Q Did the water cover the Kentile?

12 A Yes.

13 Q Then when you returned to the deck, did you find  
14 the electrician?

15 A I found him outside.

16 Q Now, was it your job to go inside should it be  
17 necessary to find anybody?

18 A Yes. It was my job to find the electrician and he  
19 generally be inside.

20 Q Was there a second time when you entered in the  
21 inside of the vessel?

22 MR. CARR: Objection to the leading.

23 THE COURT: I'll allow it.

24 Q Did you go back again?

25 A Yes.

2 A Depend on where you dock the ship. Yes.

3 Q Where the ship was sitting that day down at the foot  
4 o the gangway, you would have to walk about 250 feet to get  
5 to the nearest public telephone?

6 A I think so.

7 Q And in order to do that, you would have to walk out  
8 into the open, there is nothing over your head?

9 A No, there is nothing over your head.

10 Q And it was raining that day?

11 A Drizzling, slow rain.

12 Q Slow rain?

13 A Yes.

14 Q When did it start drizzling that day?

15 A Yes.

16 Q What time?

17 A I don't know exactly. Pretty much all day.

18 Q Was it drizzling when you turned to for work that  
19 morning at seven o'clock?

20 A It was.

21 Q While you were working, were you out on deck?

22 A Yes, I was the gangway man, giving signals for the  
23 Davis Gang.

24 Q Do you work in an exposed position to the rain when  
25 you are signal man?

1 I didn't pay no attention to this side because the icemaking  
2 machine is over there, like I say, and the stairway a further  
3 down, unless this was taken from the other side.  
4

5 Q Well, you tell us what side this is taken from.

6 A I didn't take the picture.

7 Q No, but you recognize the area, do you not?

8 A I know that is the passageway, yes.

9 Q And that is the rubber mat that ran all the way the  
10 length of that passageway?

11 A That's right.

12 THE COURT: Would it be helpful if the witness  
13 marks "stairway" and "rubber mat" so the jury can see it and  
14 where the ice machine is, as shown on the picture?

15 MR. CARR: Yes, it would, your Honor.

16 Q Would you put an "S" on the photograph where the  
17 stairway is located?

18 A Could I see some of the other photographs?

19 Q Surely.

20 I show you Plaintiff's Exhibit 24.

21 A Could I see the one with the ice-making machine?

22 Q Does the ice-making machine show in Plaintiff's  
23 Exhibit 24? Do you see the ice-making machine in Exhibit 24,  
24 Mr. Muse?

25 A I don't see it.

1 dpd  
2 this athwart ship passageway that ran the width of the ship,  
3 you used this particular door?

4 A Yes.

5 Q Did the rain enter this area?

6 A I don't think so because you got that shield there --

7 THE COURT: You have a what there?

8 THE WITNESS: You got this cover, or whatever you  
9 call it, and then it was not raining too hard.

10 Q On this photograph that you have just examined for  
11 us, Plaintiff's Exhibit 24, do you see the stairway that you  
12 discussed earlier, down which you say Mr. Princiotti fall?

13 A I cannot see the stairway.

14 Q Had you ever worked on this ship before?

15 A Sir?

16 Q Had you ever worked on this ship before?

17 A They got about four ships alike. I don't know whether  
18 I worked that one before or not. They have four that o. --

19 Q This company bought four ships at the same time?

20 A They had four different kinds -- we was told they  
21 came from States Marine, four of them. All of them just left,  
22 them four.

23 Q Were they new ships?

24 A Not new.

25 Q How old were they?

1  
2 MR. WEISBERG: May I offer it in evidence, if your  
3 Honor please? It is signed by the witness, both pages.

4 MR. CARR: I'm resisting the offer. I'd like it  
5 marked for identification.

6 THE COURT: It may be marked for identification.

XXX

7 (Defendant's Exhibit A is marked for  
8 identification.)

9 Q You didn't tell Mr. Weisberg that the machine was  
10 always leaking?

11 A How could I say it was always leaking and that was  
12 the only day I work the ship? Always means all the time,  
13 doesn't it?

14 Q Yes.

15 A How could I know if the ice machine is leaking all  
16 the time when I only worked the ship one day.

17 Q Well, is this the statement you gave Mr. Weisberg  
18 (handing)? You see your signature on that statement?

19 A That is it right there. There's my name right up  
20 there.

21 Q Well, let me show you what I'm referring to.

22 A I'll get down to it. (Reading)

23 I see what you say.

24 Q Did you tell Mr. Weisberg that the machine was  
25 always leaking?

1 dpd

Muse-Cross

2 A I don't know.

3 Q You don't know. Do you see that in your statement?

4 A I see it written in the statement, but I might have  
5 say it a different way.

6 Q Did you write out the statement yourself?

7 A No.

8 Q Who wrote it out?

9 A A lady was typing it.

10 Q And who was dictating to her?

11 A When they ask me a question, ask me something, I  
12 would tell them. I was talking.

13 Q Did Mr. Weisberg ask you if the machine was always  
14 leaking?

15 A I don't know.

16 Q Did you tell him, "It is always leaking"?

17 A I don't know. I didn't know that much about the  
18 machine. I know it was leaking then.

19 Q When you say "leaking," what do you mean?

20 A I mean that the ice machine, ice-making machine  
21 was in the galley, right by the passageway, and the water was  
22 running.

23 Q Did you see where the water was coming from?

24 A I didn't see where it was coming from.

25 Q You don't know whether it was leaking or not?

1 dpd

Muse-Cross "Weir -

2 A No, I don't.

3 MR. CARR: I have no further questions.

4 MR. WEISBERG: No further questions.

5 Thank you very kindly, Mr. Muse.

6 (Witness was excused.)

7 MR. WEISBERG: I would like to read in evidence  
8 the testimony of Eli M. Weir. I have Mr. Herman here who will  
9 read it. May I present to your Honor the original?

10 THE COURT: Members of the jury, I think I explained  
11 to you when I described the trial procedure that there are  
12 occasions when we will not have the benefit of hearing a wit-  
13 ness directly, where his testimony for one reason or another  
14 had been taken in advance of trial and presumably he is not  
15 within the subpoena power of the court. It may be because of  
16 illness that the deposition, which is what the testimony is  
17 called, will be read to you.

18 As I say, that is evidence just the same as any  
19 other evidence in the case if the witness had appeared before  
20 you. In this case, you don't have the benefit of observing  
21 the witness.

22 The man who is on the witness stand is simulating  
23 the position of the witness. He is not the witness, but to  
24 make it easier for you to follow, you will read the answers.

25 "Q What is your full name and home address?"

1 dpd

"Weir-

2 aboard the ship one year earlier and one year later.

3 MR. WEISBERG: May I point out to your Honor that  
4 a new evaporator -- two new ones, and a new condenser had  
5 been put in one month after this accident.

6 MR. CARR: That is conceded.

7 THE COURT: What was his last period of employment  
8 before May 14, 1972?

9 MR. WEISBERG: I think it was in 1971.

10 MR. CARR: June of '71.

11 THE COURT: A year before?

12 MR. WEISBERG: A year before.

13 THE COURT: I think a year has elapsed there.  
14 When did he go on next?

15 MR. WEISBERG: He also explained how the machine  
16 operates. He goes into detail on that. If your Honor feels  
17 as the testimony develops that it is not pertinent, we can  
18 strike it out.

19 THE COURT: I don't want to take it in advance.  
20 If it is not pertinent, I am going to rule on it now.

21 MR. WEISBERG: I submit it is most pertinent be-  
22 cause this machine has been breaking down.

23 THE COURT: This man's employment was in June 1971.

24 MR. WEISBERG: It was in 1971.

25 THE COURT: The accident happened May 14, '72.

1 dpd

"Weir -

2 MR. WEISBERG: It is the same machine that has been  
3 breaking down continuously.

4 THE COURT: There is a lapse of a year, and I am  
5 not going to take it.

6 Objection sustained. It is too remote.

7 (In open court.)

8 THE COURT: For reasons that don't concern you,  
9 Members of the Jury, that deposition will not be read.

10 MR. WEISBERG: May I have an exception?

11 THE COURT: You know you have an exception without  
12 taking it under the Federal Rules.

13 MR. WEISBERG: May I at this time read into  
14 evidence the testimony of Dr. Rubin Gerber.

15 THE COURT: Yes  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 dpd

Princiotti-Direct

2 Q During that morning, did you notice any conditions  
3 in that hallway?

4 A After breakfast, I noticed that there was water  
5 coming from the ice-making machine.

6 Q Was there a rubber mat placed in this hallway?

7 A Yes, sir.

8 Q Did the rubber mat cover the passageway or the  
9 hallway from wall to wall?

10 A No, sir.

11 Q Did it leave a space?

12 A Except for one little area, it was covered. One  
13 area I remember.

14 Q Now, can you tell me whether the metal -- I'm sorry.  
15 Did you see this ice-making machine?

16 A Yes, sir.

17 Q And about how many feet is the ice-making machine  
18 from the head of the stairway which leads down to the crew's  
19 quarters?

20 A Well, it is at an angle. I'd say that the stairway  
21 would be where my left hand is, and the ice-making machine  
22 would be in this direction, and I would say the length of  
23 the passageway. Right next to the passageway is the ice-  
24 making machine, which is close -- it is right next to the  
25 passageway, and it is facing this way on an angle.

1 dpd

Princiotti-Direct

10a  
164

2 A On an angle a little bit to the right.

3 Q Did you have occasion while you were serving lunch  
4 to be in and about this particular passageway?

5 A Yes, sir.

6 Q And what did you see pertaining to the area about  
7 the ice-making machine?

8 A That there was water there coming down from that  
9 machine.

10 Q How much water was there in the passageway, and  
11 please tell me how far this water spread?

12 A This water was coming from the ice-making machine.  
13 It was directly straight across from the ice-making machine  
14 and water running down along the side. In other words, there  
15 is an angle from the machine to the stairway, and it was  
16 coming down this side and running along that way. Just a  
17 little bit even past the stairway. Just right around by the  
18 stairway.

19 Q Now, what time were you finished with lunch, serv-  
20 ing lunch?

21 A About one-thirty.

22 Q And what did you do?

23 A Or twenty to two.

24 Q What did you do somewhere about one-thirty that  
25 afternoon?

1 dpd

Princiotti-Direct

2 Q And I show you this photograph and ask you to  
3 identify it, showing you Plaintiff's Exhibit 12 in evidence.

4 A Yes, that is the gangway.

5 Q And is that particular deck on which you arrived  
6 after going up the gangway a so-called sheltered deck with  
7 an overhang?

8 A Yes, it is sheltered right here. This is recessed.  
9 This goes in, this part goes in about maybe six feet; four  
10 to six feet, something like that.

11 Q I show you another photograph, Plaintiff's Exhibit  
12 No. 13 in evidence, and ask you to identify that, please.

13 A I don't know what angle is here. What is the  
14 angle?

15 Q (indicating)

16 A Yes.

17 Q What is that, please?

18 A This is the outside -- this is where I'd come up  
19 the gangway, come under this overhead that we just talked  
20 about, and then step over this piece of metal which is about  
21 maybe two or three feet high, and come into the passageway  
22 that you are talking about.

23 MR. WEISBERG: May I be permitted to show these  
24 two photographs to the jury, please?

25 THE COURT: Yes.

1 dpd

Princiotti-Cross

12a  
201

2 A Maybe two times. I don't know. I don't remember.  
3 It may have been two times. I know I did see him about the  
4 Defiance accident.

5 Q And did Mr. Weisberg send you to Dr. Smith on all  
6 occasions?

7 A Yes, sir.

8 Q In connection with your lawsuit?

9 A Yes, sir.

10 Q Now, Mr. Princiotti, let's go to the Defiance.

11 On May 13, you visited that ship for the first time,  
12 is that correct, 1972?

13 A Yes, sir.

14 Q Was the ship a relatively new ship?

15 A To me it looked like a new ship. I've never been  
16 on a ship of that type. It looked like a new ship to me, yes,  
17 sir.

18 Q And on that first day, you described for us some of  
19 your duties in connection with the serving of meals?

20 A Yes, sir.

21 Q Now, in connection with the service of meals, did  
22 you visit the ice-cube maker or the ice machine?

23 A Are you talking about the first meal I served?

24 Q Yes.

25 A No.

1 dpd

Princiotti-Cross

13a  
202

2 Q What was the first meal you served?

3 A The day I arrived, at seven o'clock in the morning  
4 of the 13th, I started working immediately, assisting the man  
5 I was to relieve.

6 Q The crew messman you were replacing had already set  
7 up for breakfast?

8 A They were already having breakfast when I arrived,  
9 which was about quarter to seven.

10 Q Did that man leave before the luncheon meal began  
11 on Saturday, the 13th?

12 A Yes, sir, he did.

13 Q That required you to set up the tables for lunch?

14 A Yes, sir.

15 Q And did you make a visit to the ice-cube maker in  
16 preparation for lunch?

17 A I believe being that it was a new job, I believe that  
18 other messman who was working -- there is a galley -- there is  
19 one messman for the crew and one messman for the officers and  
20 passengers. So, there would be two messmen. This messman  
21 helped me orient myself in setting up the procedures since it  
22 was many years since I had been a messman. He helped me. I  
23 think he may have gotten the pitchers that afternoon.

24 Q For lunch?

25 A For lunch. He told me to set up two or three tables

1           dpc                           Princelotti Cross

2           Saturday, the 13th?

3           A     Yes, sir.

4           Q     When this other fellow showed you how to set up?

5           A     It wasn't only the other fellow. The man that I  
6           was to relieve also showed me where the ice-maker was before  
7           he left. He took me down to the quarters that I was supposed  
8           to occupy, to be mine, and showed me where my room was, and  
9           I had a brief conversation with him. And he also told me  
10          where the machine was, aside from the messman that I worked  
11          with.

12          Q     The first time you went over and actually looked at  
13          the machine was at lunch time with this other man?

14          A     Yes. I would say yes. Honestly, I don't know. I  
15          may have looked at it before, but I didn't set pitchers up  
16          for breakfast that morning since there was a full complement  
17          of crew and the tables were full.

18          Q     All right. And when you went over there at lunch  
19          time to get the pitchers to set up -- well, before we go into  
20          that, how would you actually get ice out of the machine?

21          A     Well, I would have to go over to the machine and  
22          just -- there was sort of a scooper. I would use the scooper  
23          and put it into the pitchers. Then add water to it.

24          Q     Is the scooper shown in Plaintiff's Exhibit 18 here?

25          A     Yes, sir.

dpd Princiotti-Cross

2 maker?

3 A No, sir.

4 Q Nothing on the deck?

5 A No, sir.

6 Q And in the evening, when you performed the same  
7 function, did you see any water in the vicinity of the ice-  
8 cube maker on the deck?

9 A No, sir.

10 Q Now, the next morning, when you set up for break-  
11 fast, this would be May 14, the date of your accident --

12 A Yes, sir.

13 Q -- did you see any water on the deck in the vicinity  
14 of this ice-cube maker?

15 A No, sir.

16 May I add, do you mean when I came for breakfast?

17 Q When you set up for breakfast?

18 A No, sir.

19 Q When you set up for breakfast, you visited the  
20 machine to get some ice cubes, did you not?

21 A Yes. I set up, I believe, one table; one or two  
22 tables.

23 Q Now, I believe you told us that after breakfast,  
24 this is the first time you noticed any water on the deck in  
25 the vicinity of the ice-cube machine?

1 dpa

Princiotti-Cross

2 A Yes, sir.

3 Q Did you bring that to anyone's attention on the  
4 ship?

5 A No, sir.

6 THE COURT: What time was that when you first saw  
7 it?

8 THE WITNESS: About nine-thirty in the morning.

9 Q And was that --

10 A Or a quarter to ten. I don't remember.

11 Q A quarter to ten?

12 A Nine-thirty.

13 Q Was that on your way down to your quarters after  
14 finishing --

15 A Yes, sir.

16 Q You finished breakfast?

17 A Yes, sir.

18 Q And you knocked down the tables, so to speak,  
19 whatever the messman does?

20 A Yes, we cleared the tables and mopped up the mess-  
21 room and I went down.

22 Q And did you see this water in the vicinity where  
23 you would be working at lunch?

24 A In what vicinity are you talking about, sir?

25 Q Well, at lunch, was it necessary for you to go back

1       dpd                               Princ.otti-Cross

2       to the ice-making machine and get some more ice cubes for the

3       luncheon meal?

4               A       Yes, sir.

5               Q       And did you see the water on the deck in the vicinity

6       where you would have to visit the ice-cube maker?

7               A       No. I saw the water which was going the opposite

8       way. I saw it in the vicinity of the machine, yes, sir, right

9       by the machine.

10              Q       And who was your boss on that ship?

11              A       I would say the chief steward is my immediate boss.

12              Q       Where was his room?

13              A       Right opposite the stairway.

14              Q       When you say opposite the stairway, do you mean

15       alongside the stairway?

16              A       I'm sorry, alongside the stairway.

17              Q       Right here (indicating)?

18              A       Something like that.

19              Q       That is the chief steward's room?

20              A       Yes, sir.

21              Q       And he was your immediate boss?

22              A       Yes, sir.

23              Q       And you had met him when you came aboard the ship

24       the previous day?

25              A       Yes, sir.

1 dpd

Princiotti-Cross

214

2 Q No, I am talking about generally on Sunday, was  
3 there foot traffic from people who were coming aboard, shore-  
4 side people, for various reasons?

5 A Yes, I would say so.

6 Q In other words, this area was more heavily travelled  
7 in here when the ship is in port than when it is at sea?

8 A Yes. But coming up for breakfast and for lunch, I  
9 didn't notice that many people. I just didn't pay that much  
10 attention. I just went right to my work.

11 Q When did you notice the people?

12 A I'd say around noontime, and then after the accident  
13 I noticed many more people right after the accident.

14 Q Is this the usual flurry of activity that takes  
15 place on any ship when it is getting ready to sail?

16 A I would say when a ship -- most of the trips I made,  
17 I've been always on passenger ships.

18 Q Are passenger ships sailing any longer in the  
19 merchant fleet?

20 A No, sir.

21 Q There are no more berths for passenger ships?

22 A Well, there are. I think, maybe -- they are  
23 freighters. Container ships and freighters, and they take a  
24 complement of maybe ten to twelve passengers.

25 Q But as such, there are no passenger ships sailing



1 dpd Princiotti-Cross

2 A I don't know how hard it had been raining.

3 Q While you were on the pier, did it rain hard?

4 A No. It started to drizzle on my way back. I really  
5 don't remember if it was drizzling when I went out or raining  
6 when I went out or drizzling when I came back, but I remember  
7 there was rain, it was drizzling.

8 Q Was it raining heavy?

9 A No, sir, I don't believe it was raining heavy.

10 Q Mr. Princiotti, do you recall being down at my  
11 office on December 6, 1973, and giving a deposition in this  
12 case?

13 A Yes, sir.

14 Q And on page 44, line 20, were you asked these  
15 questions, and did you give these answers:

16 "Q Was there any water in this passageway from  
17 the traffic that had entered the ship from the deck  
18 outside?

19 "A Water that entered from the outside?

20 "Q In other words, rain water that had been  
21 tracked in, did you notice any traces of water?

22 "A Well, I noticed that there was a lot of  
23 traffic and possibly were walking over this mat there,  
24 and in that area, there was a lot of water. I can't  
25 say if they tracked it in or what, I don't know. I

1 dpd

Princiotti-Cross

2 wasn't looking there closely, I'm sorry.

3 "Q All right.

4 "A It was a rainy day though. As a matter of  
5 fact, it was raining very, very heavy at about eleven  
6 o'clock or twelve o'clock, something like that it was."7 Were you asked those questions and did you give  
8 those answers?

9 A Yes, sir.

10 Q Now, your purpose in going down to the dock at this  
11 time was to make a number of calls to friends?

12 A Yes, sir, about three people I wanted to call.

13 Q And you placed four calls?

14 A I placed -- I made three or four calls; got through  
15 to only one person.16 Q Were you standing in the rain while you were making  
17 these calls?

18 A No, there were phone booths that had doors to it.

19 Q You entered a phone booth?

20 A Yes, sir.

21 Q And you finally were able to contact one of the  
22 people you were trying to call?

23 A Yes, sir.

24 Q And after that, you came back aboard the ship?

25 A Yes, sir.

1           dpc                           Princiotti-Cross

2           Q       And did your accident happen seconds after you came  
3 back aboard the ship?

4           A       I would say so. Not seconds but as long as it would  
5 take for me to walk and come up the gangway and to walk down  
6 that --

7           Q       Was the gangway wet?

8           A       I would say it was wet.

9           Q       Was the open deck of the ship wet?

10          A       No.

11          Q       The open deck of the ship was not wet?

12          A       By open deck, I don't know what you mean. There's  
13 a gangway, and I come up this gangway. That's all enclosed.  
14 As soon as I come on the ship, it is all closed. There's an  
15 overhead.

16          Q       There's an overhead. Is there a side?

17          A       A side?

18          Q       Is there any side along the ship to prevent the  
19 rain from coming in?

20          A       Yes, there's a side there. That's what I mean.

21          Q       Show me where the side is.

22          A       The side goes deep in here. This is out like. This  
23 is retracted (indicating). In other words, there's a walkway  
24 here -- once you are on the ship, there is a walkway that's  
25 covered like an overhead, from the top deck.

1 dpd Princiotti-Cross

2 A About the same time that it would take from the end  
3 of this room to about here, same time, same distance. Or a  
4 little longer.

5 Q And as you were walking down this passageway, were  
6 there handrails in the passageway?

7 A Yes, there are handrails in the passageway.

8 Q Were you using them?

9 A I was walking along the mat.

10 Q Were you using the handrails?

11 A I don't remember if I was using the handrails or  
12 not. But I remember -- I don't remember. I don't think I  
13 was using the handrails. I may have, and I may have not.  
14 I don't remember, sir.

15 Q You have no clear recollection on that?

16 A No, sir. I believe I was walking straight along the  
17 mat.

18 Q Without using the handrails?

19 A Yes.

20 Q Now, when you got to the head of that stairway,  
21 you turned right?

22 A Yes, sir.

23 Q By the way, was this passageway well lit?

24 A Yes, sir.

25 Q Plenty of light in there?

2 A I would say almost as light as this room is.

3 Q And it was at that point when you took this right turn at the head of the stairway that you slipped?

5 A Yes, sir.

6 Q And you fell down the stairway?

7 A Yes, sir. As I fell, I was trying to grab for the  
8 handrail and I missed it.

9 Q Are there safety treads on these stairs?

10 A Yes, sir.

11 Q What are the safety treads composed of?

12 A I would say rubber or steel or something, some kind of  
13 of grading, I would say.

14 Q Some kind of an anti-skid device?

15                                   A       Yes, sir.

16 Q When you landed on the stairs, down the stairs, did  
17 you lose consciousness?

18           A       This I don't remember. I remember being picked up,  
19       the steps. I remember just leaning against the wall. I  
20       don't know if I was conscious or unconscious. I remember  
21       being helped up and people coming down, running down to see  
22       what had happened.

23 Q Well, is it fair to say that you don't think you  
24 lost consciousness?

25 A I'd say I was dazed.

1 dpd Princiotti-Cross

2 A Yes, sir. But there wasn't much pain at that time  
3 in my right ankle.

4 Q Wasn't much pain?

5 A No.

6 Q Did they bother to X-ray it?

7 A They X-rayed all parts of my body.

8 Q As a precautionary measure?

9 A I believe at both hospitals; because the Marine  
10 Hospital never received the report from the Saint James  
11 Hospital. It took a few days or weeks to get that report.  
12 I think they may have gotten it by phone. That's the reason  
13 that they went through these thorough examinations.

14 Q While you were still on the Defiance, Mr. Prin-  
15 ciotti, did the purser ask you how your accident occurred?

16 A Yes, sir.

17 Q Did you say to the purser anything about a leak  
18 from the ice-cube maker?

19 A I don't recall if I did or not, sir.

20 Q Well, I'm referring to your examination before  
21 trial once again. Page 62, line -- I'm sorry, 61, line 22.  
22 Were you asked these questions and did you give these answers?

23 "Q Did any ship's officer question you about your  
24 accident before you left the vessel?

25 "A Maybe the purser but I don't remember. It was

1 dpd

"Robbins -

2 "Q I show you the photograph and ask you to point  
3 and to mark with this pen an arrow of the doorway that  
4 leads to the athwart ship passageway.

5 "(Witness complies.)

6 "MR. WEISBERG: I ask this be marked Plain-  
7 tiff's Exhibit 2 for identification," which is now  
8 Plaintiff's Exhibit 12 in evidence.

9 "Q Mr. Robbins, I show you Plaintiff's Exhibit 2  
10 for identification, now marked Plaintiff's Exhibit 12 in  
11 evidence, and ask you to look at it and please describe  
12 whether the entrance to the passageway that we are dis-  
13 cussing is sheltered?

14 "A By sheltered, what exactly do you mean?

15 "Q I mean that it was a protection overhead and  
16 that the area of entrance is recessed.

17 "A Yes, the entrance to the athwart ship passageway  
18 is recessed, and there is an overhead area there,  
19 protective overhead area.

20 "Q Can you approximate for me the distance between  
21 the entrance to the passageway that we are discussing and  
22 the outside of the vessel or the solid rail?

23 "A It is approximately five feet. You couldn't  
24 tell that from the picture, though. That's just from  
25 being on the ship.

1 bpd

27a  
301

2 4:00 P.M. and through the night. "

3 The physical arrangements on board the ship were  
4 such that no rainwater could come in and nothing could be  
5 trafficked. There was negligence in the type of the method  
6 they used. It was narrow, never from wall to wall. The  
7 photographs all show that there was a space of at least a foot  
8 on either side of the rubber mat.

9 Furthermore, at different portions of the hallway,  
10 they had strips running perpendicular. They never had any  
11 strip running from this mat to the head of the steps.

12 They failed to repair the machine. They permitted  
13 the condition.

14 This vessel didn't have a full complement on that  
15 day. They just permitted the condition to be.

16 The plaintiff testified as to the few meals he was  
17 given, serving a few meals. That was only because there were  
18 a few members of the new crew. Somebody other than himself  
19 had the job to clean up. That they failed to do. We made  
20 out a case on all counts.

21 THE COURT: Well, I will deny the motion.

22 The plaintiff withdraws the negligence case. The  
23 motion on unseaworthiness is denied.

24 MR. CARR: Your Honor, could I address one more  
25 motion to the Court?

1 bpd

Robbins-Direct

2 in that area there, and I ran down to provide any assistance  
3 I could.

4 Q What did you find when you arrived at the main deck?

5 A Mr. Princiotti was standing up against the aft  
6 bulkhead in the athwart ship's passageway.

7 Q Would you put an "X" on this blackboard where he  
8 was standing, as best you can recall.

9 A Surely.

10 (Witness marks.)

11 Q What did you do when you arrived at that point?

12 A Well, the primary thing, I wanted to examine the  
13 man to see what the injuries were. There were a lot of people  
14 gathered around him, and I wanted to determine how bad he was  
15 injured to see what type of treatment could be given. And I  
16 asked him if he was okay, what had happened, and when it was  
17 determined that there was no visible sign of any injury at  
18 that time, I asked him to come into the crew messroom so I  
19 could examine him more closely in a private area because this  
20 area was a very public area. There were people walking back  
21 and forth constantly.

22 Q And did he make his way through the crew's messroom?

23 A Yes, he did.

24 Q When you say the messroom, do you mean the mess room  
25 or the lounge?

1 bpd

Robbins-Direct

29a  
314

2 MR. WEISBERG: The witness has failed to read the  
3 top of this particular page, and I request that he read it as  
4 it is all part of the same.

5 THE WITNESS: Okay. I had omitted the one  
6 column here. I had written down "contusion to head, right  
7 shoulder, left leg (ankle)." That's for the disease, injury  
8 or complaint column that was made.

9 MR. WEISBERG: Thank you.

10 Q Does that complete your note recorded on May 14,  
11 1972?

12 A On the last page --let me just check the last page,  
13 sir, to see if I have anything else there.

14 Yes, that's correct.

15 Q Did you conduct an inspection of this area?

16 A Yes, I did.

17 Q What did your inspection reveal?

18 A Well, the stairway was leading down to the crew  
19 quarters -- there was no grease on the handrails; it wasn't  
20 wet. There was nothing there that would cause you to slip  
21 or fall in that area. There was nothing on the handrails.

22 Q Did you also conduct an inspection of the deck  
23 area at the head of the stair wall?

24 A Yes.

25 Q What did that reveal?

1 bpd

Robbins-Direct

2 A The area was normal, well lit; there was just a  
3 normal -- there was no garbage or anything else on the floor.  
4 Normal conditions.

5 Q Was there a floor covering of any kind in that  
6 passageway?

7 A Yes, there was.

8 Q What was it?

9 A It is all a long mat. I think it is made out of  
10 rubber, a long rubber mat.

11 THE COURT: Where did that run, athwart ship?

12 THE WITNESS: Athwart ship, from the starboard  
13 side to the port side.

14 Q What were the weather conditions that day?

15 A In the morning, it was -- I drove down to the ship,  
16 at that time, and there was a light drizzle, and then when  
17 Mr. Princiotti was taken off the ship, it was raining  
18 heavily then.

19 Q Did Mr. Princiotti tell you at any time what had  
20 caused his accident? /

21 A I believe he mentioned that his shoes were wet and  
22 that he had slipped.

23 Q Did he complain about any conditions aboard the ship?

24 A No.

25 Q Did you see any puddle of water in this passageway?

1 bpd Robbins-Direct-Cross

2 A Not that I can recall, no.

3 MR. CARR: I have no further questions.

4 - - -

5 CROSS EXAMINATION

6 BY MR. WEISBERG:

7 Q Mr. Robbins, I shall be brief.

8 Had there been trouble with this ice-making machine  
9 prior to May 14 of 1972?

10 A What do you mean by "trouble"?

11 Q Didn't work. When it did work, water would come  
12 out.

13 A We had trouble where it didn't work but would be  
14 shut off. Nothing where water came out.

15 Q I show you this photograph, which is Plaintiff's  
16 Exhibit 3, and ask you whether, throughout any of the times  
17 you were on board the vessel, you ever saw the ice-making  
18 machine in that condition with the shield off?

19 A I possibly had seen it maybe once or twice. Most  
20 of the time, the shield was on.

21 Q When the shield is on, can you get to the controls  
22 of the ice-making machine?

23 A No, I guess not.

24 Q It is easier to get to the controls when the shield  
25 is off?

1           Lpd                               Friesen-Direct

2           Q       And where is the sanitary drain located?

3           A       Well, it is right adjacent to the bin. There is a  
4       small piece of pipe that you would call a nipple to an elbow  
5       and then down to -- well, this is usually an inch and a half  
6       or two inches above the drain, to preclude any possibility of  
7       water in the drain, in the main drain, from coming up and  
8       entering into the bin itself.

9           Q       And do you see such a drain in Plaintiff's Exhibit  
10       3 in evidence?

11          A       Yes, sir.

12          Q       Is that the design that you have seen on other  
13       ships?

14          A       Yes, sir.

15          Q       Is there anything unique or unusual about this  
16       particular sanitary drainline design?

17          A       No. This one has a collar above it, which is not  
18       always in evidence.

19                       This is to preclude water running off, I guess, the  
20       leaf going away from the drain.

21          Q       Were any repairs or any defects in the water  
22       integrity of the bin reported by your mechanic when he went  
23       aboard the ship?

24          A       May I just briefly look at this?

25          Q       Sure.

1 bpd

Frieson-Direct

2 (Pause.)

3 MR. WEISBERG: The paper speaks for itself, your  
4 Honor.

5 A No, there is no evidence of any malfunction of the  
6 drain in the bin.

7 Q What is the size of this machine?

8 A Are you talking about the working capacity of the  
9 machine?

10 Q The working capacity.

11 A It will produce about four hundred pounds of ice  
12 a day. The bin will hold approximately two hundred or two  
13 hundred fifty pounds.

14 Q And that is in cube form?

15 A Yes.

16 Q By the way, who is the manufacturer of this  
17 particular ice-cuber?

18 A LaCrosse.

19 Q And how long has this model been on the market?

20 A Well, LaCrosse has been manufacturing ice-makers  
21 since ice-makers were first developed in 19--the late fifties,  
22 I'd say.

23 Q Do you know how long the stainless steel bins are  
24 supposed to give service?

25 A Well, stainless steel of that type will outlast the

1 bpd

Friesen-Direct-Cross

2 machine.

3 I have never seen any stainless steel bin either  
4 leak or be destroyed unless it was set out to be destroyed.  
5 That is the inner part.

6 Now, the outside jacket holding the insulation will  
7 rust through but will not penetrate the bin itself.

8 MR. CARR: I have no further questions.

9 - - - - -

10 CROSS EXAMINATION

11 BY MR. WEISBERG:

12 Q Who told you that the stainless bin was leaking?

13 A (No response.)

14 Q Did anybody tell you that the stainless bin was  
15 leaking?

16 A There was no report of the stainless bin leaking.

17 Q But it is possible for insulation surrounding  
18 the evaporator, the insulation to break through and a leak  
19 come from there?

20 A The insulation?

21 Q Yes.

22 A I have never seen a condition like that.

23 Q What statement did you just make. Perhaps I didn't  
24 get the full import of it about something wearing through.

25 A The outside jacket is usually made out of a ferrous

1           dpu                           Lujon-Direct

2           Q       How many passengers is the ship designed to carry?

3           A       Twelve.

4           Q       Now, were you chief steward on the Defiance on the  
5       day Mr. Princiotti had an accident?

6           A       Yes.

7           Q       Do you remember where the ship was at that time?

8           A       It was over in -- over by Newark.

9           Q       Would it be Port Elizabeth?

10          A       Port Elizabeth.

11          Q       Had you come in with the ship on the foreign trip?

12          A       Yes.

13          Q       And do you remember what day it was that Mr. Prin-  
14       ciotti had an accident?

15          A       I don't remember. I know it was on a weekend.

16       Either Saturday or Sunday. I really don't remember. But I  
17       know it was around the weekend.

18          Q       Do you remember the weather conditions that day?

19          A       Raining all day.

20          Q       Had you gone ashore at night?

21          A       At night?

22          Q       Yes.

23          A       Sure.

24          Q       I mean Saturday night.

25          A       Yes.

1 dpd Dujon-Direct

2 down the step.

3 Q And what did you do when you heard that?

4 A I went downstairs and I saw the purser, and he was  
5 sitting down on a bench there.

6 Q Where?

7 A In the crew recreation room.

8 Q What?

9 A A settee.

10 Q Is that crew recreation room shown on this sketch?

11 A Yes, the lounge.

12 Q In the lounge here?

13 A Yes.

14 Q Did you notice the condition of the deck outside in  
15 the passageway?

16 A Well, like what you mean?

17 Q Well, did you take any notice of the deck out in  
18 the passageway when you came down there to see Mr. Pinner?

19 A I looked on the deck. The deck was all right.

20 Q When you say the deck was all right, did you see any  
21 water on the deck?

22 A No, there was no water. Some foot marks from the  
23 rain, I guess.

24 Q Did you see any puddles of water?

25 A No, no, there was no water there.

1 dpd

Lujon-Direct

37a  
440

2 Q Is that particular passageway well used by shore-  
3 side people?

4 A Used -- it's by the engines of the ship. It's used  
5 by the crew and also the shore-side people who come in.

6 Q Is it kind of like the Times Square area on the  
7 ship?

8 A Well, I would imagine so.

9 Q Now, are you familiar with the ice-cube machine in  
10 this area?

11 A Well, there was one right in the passageway there.

12 Q Who does that ice-cube machine provide ice for?

13 A For the crew, entire crew.

14 Q Anybody in the crew who wants to use it can?

15 A Oh, yes.

16 Q During your three years on the ship -- is that how  
17 long you have been there?

18 A Yes, yes, about three years now.

19 Q Have you ever seen water leaking out of that ice-  
20 cube machine?

21 A No.

22 Q Are you sure of that?

23 A No. You got a stopper there that the water comes  
24 down and goes inside the stopper which has a cup.

25 Q Now, have there ever been times when that scooper

apd

A I give Johnson orders to put it down.

Q When did he put it down?

A He put it down before we get into port.

Q Now, I show you this photograph, just to refresh your memory. Will you look at it, please?

A Yes.

Q And will you tell me whether there is a space on either side of the rubber mat?

A Yes, there is space.

Q Now, also is there any rubber stripping running perpendicular from this long rubber mat to the head of the steps?

A You mean this piece here?

Q Piece similar to that, which is in front of the engine room door?

A No, this isn't in front of the engine room there. This is put there because of the engineers that come up there their feet is dirty.

Q But there is no rubber mat which runs from the long mat to the head of the steps, of the stairway or ladder that goes down to the crew's quarters?

A     There is no rubber mat going down to the crew's quarters.

Q What is the space between -- and you can look at the

A 201 Affidavit of Service by Mail  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

VICTOR PRINCIOTTI,  
Plaintiff- Respondent, *appellant*

MED

Defendant- Appellant, *appellee*

- against -

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF

S.S.:

I, Velma N. Howe *being duly sworn,*  
depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
298 Macon Street, Brooklyn, New York 11216

That on the 21st day of January 1976, deponent served the annexed *Brief*

upon VICTOR PRINCIOTTI attorney(s) for

in this action, at c/o Cappadona 308 Columbia Avenue, Jersey

City, N.J. 07307 *the address designated by said attorney(s) for that*  
purpose by depositing *a* true copy of same, enclosed in a postpaid properly addressed wrapper in a  
Post Office Official Depository under the exclusive care and custody of the United States Post Office  
Department, within the State of New York.

Sworn to before me, this 21st  
day of January 19 76

*Robert T. Brin*

*Velma N. Howe*

VELMA N. HOWE

ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977